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REMARKS

The Office Action mailed April 27, 2007 has been carefully considered together with each of the references cited therein. The amendments and remarks presented herein are believed to be fully responsive to the Office Action. No new matter has been introduced. Accordingly, reconsideration of the present Application in view of the above amendments and following remarks is respectfully requested.

Objection to the Specification

The Specification stands objected to because the Abstract of the disclosure does not commence on a separate sheet in accordance with 37 CFR 1.52(b)(4). By this Amendment a new abstract of the disclosure is presented on a separate sheet, apart from any other text. Applicant respectfully requests the Specification be allowed.

Claim Status

Claims 1 – 17 are pending. By this Amendment, Applicant has amended 1, 4, 8, and 11. Claim 7 has been cancelled. Consequently, the claims under consideration are believed to include Claims 1 – 6, and 8 – 17.

Claim Rejections under § 102

Claims 1 – 5, 11, 13 and 14 stand rejected under 35 U.S.C. 102(b) as being anticipated by Bohler (US 4,439,562). This rejection is respectfully overcome.

The Office states, "Bohler teaches dyeing polyester with dyestuffs of formula I_b where the R substituents are hydrogens and the Me substituents is nickel (column 4, example 1). Bohler further teaches producing polyester yarns from the dyed polyester. Accordingly, Bohler anticipates the material limitations of the instant claims."

Applicant respectfully overcomes this rejection as Bohler teaches dyeing in the mass, see Abstract, whereas newly amended Claim 1 teaches the dyeing step takes place in a thermosol, exhaust, or continuous dyeing process from an aqueous bath.

Claims 1 – 5, 11, and 14 stand rejected under 35 U.S.C. 102(b) as being

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anticipated by Papenfuhs et al. (US 4,265,632). This rejection is respectfully overcome.

The Office states, "Papenfuhs et al. teach dyeing polyester with dyestuffs of the instantly claimed formula (I) (columns 6-8, examples). Papenfuhs et al. further teach producing polyester filaments, fibers and shaped articles from the dyed polyester (column 6, lines 5-20). Accordingly, Papenfuhs anticipate the material limitations of the instant claims."

Applicant respectfully overcomes this rejection as Papenfuhs, et al., teaches dyeing in the mass, see column 1, line 67 through column 2, line 16, whereas newly amended Claim 1 teaches the dyeing step takes place in a thermosol, exhaust, or continuous dyeing process from an aqueous bath.

Claims 1, 2, 6, 7, 11, and 14 stand rejected under 35 U.S.C. 102(b) as being anticipated by Shirasaki, et al. (US 5,942,011). This rejection is respectfully overcome.

The Office states, "Shirasaki et al. teach dyeing polyester fibers with dyestuffs of the copper complex type and C.I. Disperse Yellow 64, C.I. Disperse Red 60 and C.I. Disperse Blue 56 (column 7, example 13). Accordingly, Shirasaki anticipate the material limitations of the instant claims."

Applicant respectfully overcomes this rejection because in Shirasaki, et al., the metallized dyes are the direct dyes for the cellulose and the disperse for the polyester are not metallized, see for example Claim 2 in Shirasaki, et al.

It is well settled that to anticipate a claim, a single source must contain all of the elements of the claim. See *Hybritech Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 1379, 231 U.S.P.Q. 81, 90 (Fed. Cir. 1986); *Atlas Powder Co. v. E.I. du Pont De Nemours & Co.*, 750 F.2d 1569, 1574, 224 U.S.P.Q. 409, 411 (Fed. Cir. 1984); *In re Marshall*, 578 F.2d 301, 304, 198 U.S.P.Q. 344, 346 (C.C.P.A. 1978). Therefore, as neither of Bohler, Papenfuhs, et al., or Shirasaki, et al. contain all of the elements of Claims 1 – 6, 11, 13, and 14, Applicant respectfully overcomes the §102 rejections and courteously requests these Claims be allowed. By this Amendment, Claim 7 has been cancelled and the rejection is moot.

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Claim Rejections under § 103

Claims 1-17 stand rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Mach et al. (2001/0004780).

The Office states:

Mach et al. teach dyeing polyesters with dye mixtures comprising C.I. Solvent Brown 53 and C.I. Disperse Violet 57 (page 1, paragraphs 0010-0012). Mach et al. further teach printing the textiles with the same dye combinations (page 1, paragraph 0014). Mach et al. further teach producing military camouflage articles with the dyed fibers (page 1, paragraph 0009). While Mach et al. is silent as to producing clothing from the textiles, this would be encompassed by the teachings of Mach et al., since camouflage military uniforms are commonly produced from dyed polyester.

Accordingly, Mach et al. anticipate the limitations of the instant claims.

In the alternative, if the teachings of Mach et al. are not sufficient to anticipate the material limitations of the instant claims, it would have been nonetheless obvious to select the instantly claimed components from the teachings of Mach et al. to arrive at the instant invention because Mach et al. teach similar textiles dyed by similar dyes with similar methods. Mach et al. further teach producing camouflage articles with high fastness levels and methods that are more economical. It would further have been obvious to produce clothing from the dyed polyester textile because military uniforms are commonly camouflage and polyester is a well-known component of textile materials.

One of ordinary skill in the art would have been motivated to modify the teachings of Mach et al. to arrive at the instant invention absent unexpected results.

The Applicant can not agree. Respectfully speaking Mach , et al. relates to a textile spun-dyed fiber material comprising synthetic fibers, see Abstract. More particularly see paragraphs [0012] through [0014] of Mach, et al.

[0012] Preferred dyes useful for spin dyeing the synthetic fiber fraction include for example C.I. Solvent Blue 122, C.I. Solvent Blue 132, C.I. Solvent Blue 104, C.I. Solvent Blue 45, C.I. Solvent Yellow 83, C.I. Solvent Yellow 147, C.I. Solvent Brown 53, C.I. Disperse Violet 57 and C.I. Pigment Blue 29.

[0013] The spin dyeing process is known per se. In spin dyeing, the spinning solution or melt is admixed with pigment or soluble dyes which remain in the fiber at the coagulation stage and thus color the fiber. The colorants are preferably added in the form of masterbatches which may

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already contain any assistants required. Details concerning spin dyeing may be found in Rompp Chemielexikon, 9th edition, 1992, volume 5, page 4247; and especially the references cited therein. Inventive textile spun-dyed material consisting exclusively of synthetic fibers is also useful as such for camouflage articles when a solid color is acceptable. In this case the desired hue is obtained exclusively by spin dyeing using appropriate amounts of dye.

[0014] Generally, however, the inventive textile spun-dyed fiber material consisting exclusively of synthetic fibers is used for producing military camouflage print articles. To this end, the desired camouflage patterns are printed on in the corresponding camouflage hues in a second step. This step may in principle employ the same dyes as already used in spin dyeing. Generally, disperse dyes are used for polyester fibers and acid or metal complex dyes for polyamide fibers. It is advantageous in this case to produce the spin dyeing in that shade which corresponds to the lightest hue of the camouflage print pattern and to print on the darker patterns. The lightest hue is generally light green.

One with ordinary skill in the art and common sense, having a knowledge of Mach, et al., could not be motivated to use the colorants of paragraph [0012] to improve the lightfastness of a polyester material or have any expectation of reasonable success by substituting the colorants of paragraph [0012] into the process of instant Claim 1.

More succinctly stated, Mach et al., is directed to a textile spun-dyed fiber material comprising synthetic fibers. As previously stated the instant application is directed to a process for improving the lightfastness of polyester material. Therefore, Mach et al., can not provide one with ordinary skill in the art and common sense at the time of the invention the required teaching, suggestion or motivation to modify the spun-dyed fiber of Mach, et al., to arrive at the instantly claimed embodiment of the invention. Applicants, therefore respectfully overcome the §102/§103 rejection and request Claims 1 – 17 be allowed.

Claims 1 – 3, 7, 11, and 12 stand rejected under 35 U.S.C. 103(a) as obvious over Reinert et al. (US 4,895,981). This rejection is respectfully overcome.

The Office states:

"Reinert et al. teach dyeing polyester with metal complex dyes mixed with disperse dyes, where the metal may be copper, nickel or chromium and where the disperse dye may be C.I. Disperse Yellow 142, C.I. Disperse Blue 60, C.I. Disperse Violet 57 or Disperse Red

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302 (column 4, lines 64-68; column 5, lines 1-25; column 10, lines 15-30) Reinert et al. do not teach all the instantly claimed embodiments in a single example.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to select the instantly claimed components from the teachings of Reinert et al. to arrive at the instant invention because Reinert et al. teach similar textiles dyed by similar dyes with similar methods. Reinert et al. further teach producing dyed articles with improved photochemical stability. It would further have been obvious to produce clothing from the dyed polyester textile because Reinert et al. teach producing knitted or woven fabrics, which are well known component of clothing. One of ordinary skill in the art would have been motivated to modify the teachings of Reinert et al. to arrive at the instant invention absent unexpected results."

Applicant can not agree. One with ordinary skill in the art, would be very aware that Reinert et al. teach the use of 1:1 and 1:2 metal complex acid dyes for dyeing the wool and not the polyester portion of a polyester/wool blend, see column 4, line 48 through column 5, line 18.

A sustainable *prima facie* case of obviousness, requires that the prior art contain some suggestion or incentive that would have motivated the skilled artisan to modify a reference or combine references in a manner to arrive at the claimed invention.

Reinert, et al., is directed to a process for improving the photochemical stability of dyeings on polyester fiber materials by means of UV absorbers of formula 1. The ordinary artisan would, in contrast, have an express disincentive to modify Reinert, et al. as proposed by the Office, for to do so would require the ordinary artisan to reject and abandon the teaching of Reinert, et al., which expressly discloses,

"Examples of the anionic dyes are the salts of monoazo, disazo or polyazo dyes, including formazan dyes, containing heavy metals or preferably free from metals, and of the anthraquinone, xanthene, nitro, triphenylmethane, naphthoquinone imine and phthalocyanine dyes. The anionic character of these dyes can be brought about solely by metal complex formation and/or, preferably, by acid, salt-forming substituents, such as carboxylic acid groups, sulfuric acid ester and phosphonic acid ester groups, phosphonic acid groups or sulfonic acid groups. The molecule of these dyes can also contain so-called reactive groupings which form a covalent bond with the wool."

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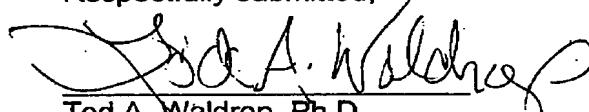
The 1:1 or 1:2 metal complex dyes are of particular interest. The 1:1 metal complex dyes preferably contain one or two sulfonic acid groups. The metal present is a heavy metal atom, for example copper, nickel or especially chromium." (emphasis added)

For at least the reasons stated above, regarding the lack of teaching, suggestion, or motivation provided by Reinert, et al., Applicants are of the courteous position that the §102/§103 rejections have been overcome. Reconsideration and withdrawal of the §102/§103 rejections is respectfully and earnestly solicited.

As the total number of claims does not exceed the number of claims originally paid for, no fee is believed due. However, if an additional fee is required, the Commissioner is hereby authorized to credit any overpayment or charge any fee deficiency to Deposit Account No. 03-2060.

In view of the forgoing amendments and remarks, the present Application is believed to be in condition for allowance, and reconsideration of it is respectfully requested. If the Examiner disagrees, she is courteously requested to contact the agent for Applicant at the telephone number provided below.

Respectfully submitted,



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